THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO. 1203 OF 2006

Between:

M.V.Ramanaiah ….. Appellant

v.

1. The Government of A.P. rep by
its Secretary, Industries & Commerce (VIG)
Department, Secretariat, Hyderabad and 4 others .. Respondents

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO. 1203 OF 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard both sides and at their request the writ appeal is itself taken up for disposal.

In the impugned order dated 4.3.2006, while noting that the disciplinary authority had proposed the punishment of "reversion to his next lower rank" and that a show cause notice had been issued accordingly to the petitioner, it is held that the disciplinary authority, based on the directions of the government in its letter dated 1.3.2006 to impose the penalty of dismissal from service, had imposed the penalty of dismissal from service.

Sri M.Panduranga Rao, learned counsel for the appellant, would submit that under the applicable regulations an employee is required to be given a hearing against the nature of the punishment in case the charges are held to be proved. Learned counsel would submit that, since the Regulations require the appellant to be put on notice with regards the proposed punishment and as the disciplinary had proposed the punishment of "reversion to the lower rank", it was not open to the disciplinary authority to impose a punishment higher than the proposed penalty.

We find considerable force in this submission. While it is true that principles of natural justice by itself do not require an employee to

be put on notice with regards the proposed punishment, where such requirement is prescribed under the rules, such a prescription must be complied with. Once an employee is put on notice with regards the punishment of "reversion to the next lower rank", while it may be open to the disciplinary authority either to impose that punishment or a lesser punishment, a punishment, higher than the penalty proposed, cannot be imposed as the delinquent employee has neither been put on notice nor given an opportunity of being heard in this regard. On this short ground the writ appeal is to be allowed.

Sri N.Rajeswara Rao, learned counsel for the respondents, would submit that it is always open to the respondents, if they so choose to issue another show cause notice proposing the punishment of dismissal from service. We are not inclined to express any opinion as this question, at present, is merely academic. Suffice it to hold that the order now passed by us, setting aside the impugned order, will not preclude the respondents from taking action against the petitioner in accordance with law.

The writ appeal is allowed to the extent indicated above. However, in the circumstances without costs.

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B.PRAKASH RAO,J

Date: 2-1-2007

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RAMESH RANGANATHAN,J

ASP